

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raymond Barto	Team: Team # 4	CCRB Case #: 200916501	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 10/18/2009 9:39 PM	Location of Incident: § 87(2)(b) and PSA5 Stationhouse	Precinct: 25	18 Mo. SOL 4/18/2011	EO SOL 4/18/2011	
Date/Time CV Reported Thu, 10/22/2009 2:55 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/22/2009 2:55 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joel Espinosa	13711	947647	PSA 5
2. SGT Shane Killilea	03372	927030	PSA 5
3. An officer			
4. POM Joan Ferreira	07431	941746	PSA 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Erika Diaz	10963	946931	PSA 5
2. POM Roger Sorto	05187	947658	PSA 5

Officer(s)	Allegation	Investigator Recommendation
A.POM Joel Espinosa	Force: PO Joel Espinosa used physical force against § 87(2)(b) at § 87(2)(b)	
B.SGT Shane Killilea	Force: PO Shane Killilea used physical force against § 87(2)(b) at § 87(2)(b)	
C.POM Joan Ferreira	Force: PO Joan Ferreira used physical force against § 87(2)(b) at § 87(2)(b)	
D. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon the sexual orientation of § 87(2)(b) at § 87(2)(b)	
E. An officer	Force: An officer used physical force against § 87(2)(b) at the PSA5 stationhouse.	

### Case Summary

§ 87(2)(b) filed a complaint with the CCRB by telephone on October 22, 2009. On October 18, 2009, PO Joel Espinosa arrested § 87(2)(b). The following allegations resulted:

### Results of Investigation

**Allegation A – Force:** PO Joel Espinosa used physical force against § 87(2)(b)

**Allegation B – Force:** Sgt. Shane Killilea used physical force against § 87(2)(b)

**Allegation C – Force:** PO Joan Ferreira used physical force against § 87(2)(b)

§ 87(2)(g)

**Allegation D – Offensive Language:** An officer made remarks to § 87(2)(b) based upon the sexual orientation of § 87(2)(b)

**Allegation E – Force:** An officer used physical force against § 87(2)(b)

§ 87(2)(g)

### Civilian Statements

**Complainant:** § 87(2)(b)

- § 87(2)(b)

### CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on November 23, 2009 (encl. 4E-S). On October 18, 2009, § 87(2)(b) and his friend § 87(2)(b) took a taxi to visit a friend at § 87(2)(b). § 87(2)(b) and § 87(2)(b) were drinking beer in the taxi and continued to drink after they got out. § 87(2)(b) had had one and a half beers. PO Joel Espinosa and PO Erika Diaz stopped § 87(2)(b). They asked § 87(2)(b) for ID but let him go because he did not have an ID. They asked § 87(2)(b) for ID but he did not have ID either. They asked if there were any warrants out for his arrest and § 87(2)(b) told them that there was a warrant. PO Espinosa put him in handcuffs and § 87(2)(b) did not resist. Sgt. Shane Killilea and PO Joan Ferreira responded to the location in a marked van. § 87(2)(b) could not tell the difference between the officers. Officers pushed him into the van. Sgt. Killilea, PO Espinosa, and PO Ferreira got into the van and hit him numerous times. They all punched and kicked him all over his body numerous times while he was lying down in the van. They hit his right knee, which caused him to limp. An officer called him a “fucking homo” and “faggot.” He did not know who said this because he could not tell the difference between the officers. § 87(2)(b) did not spit at them. He did not hit or kick any of the officers in the van. The officers hit § 87(2)(b) until he lost consciousness.

§ 87(2)(b) woke at the stationhouse to find a cut on the bridge of his nose and his mouth bleeding. § 87(2)(b) was put into a holding cell and then later taken out for fingerprinting. In the room with the fingerprinting machine, officers were trying to make him sign a document, which § 87(2)(b) refused to sign because he cannot read or write. An officer, PO6, a male Hispanic, 37-

38 years old, muscular, with no facial hair or glasses, jumped on top of § 87(2)(b) while he was sitting in a chair and pushed the chair over so the back of his head hit the ground. § 87(2)(b) believed that PO6 was the arresting officer of a homeless man that he was in the cell with.

### **Photo Array**

§ 87(2)(b) appeared for a photo array on May 24, 2010 (encl. 4T-V). The photo array included all Hispanic male officers assigned to PSA5 during tour 3, except for Lt. Juan Fontan who is significantly older than § 87(2)(b) described PO6 to be. § 87(2)(b) identified a filler officer as PO6. § 87(2)(b) also chose PO Roger Sorto, stating that he was an officer that witnessed PO6 push him.

### **Witness:** § 87(2)(b)

### **CCRB Testimony**

§ 87(2)(b) provided a phone statement on June 4, 2010. § 87(2)(b) did not remember anything that the officers said to § 87(2)(b) except telling him that they were detectives. He did not remember the officers doing anything in the van with § 87(2)(b) except talking to him.

### **NYPD Statements:**

#### **Subject Officer: PO JOEL ESPINOSA**

- *PO Espinosa is a § 87(2)(b)-old Hispanic male, 5'11", 215 lbs., with black hair and brown eyes.*
- *On October 18, 2009, PO Espinosa was assigned to foot post #559 with PO Erika Diaz from 6:00 p.m. to 2:35 a.m. He was in uniform and not assigned to a motor vehicle.*

#### **Memo Book**

At 9:34 p.m. PO Espinosa stopped § 87(2)(b) for an open container of alcohol (12 oz. bottle of Corona). § 87(2)(b) DOB § 87(2)(b) At 9:39 p.m., he arrested § 87(2)(b) due to an open I-card. At 9:42 Defendant kicks officers as he refuses to get into the RMP. Sgt. Killilea arrived on scene. Defendant kicked PO Espinosa and spit at Sgt. Killilea as he entered the RMP. At 9:49 p.m. they arrived at the stationhouse.

#### **Arrest Report #M09693810**

PO Espinosa arrested § 87(2)(b) for § 87(2)(b)

PC § 87(2)(g)

### **CCRB Testimony**

PO Espinosa was interviewed at the CCRB on May 14, 2010 (encl. 5A-G). On October 18, 2010, he stopped § 87(2)(b) for an open container and an open UF-61. § 87(2)(b) moved his arms around and begged the officers to let him go while PO Espinosa put him in handcuffs. They called for Sgt. Killilea to come pick up § 87(2)(b) because they did not have a vehicle. When Sgt. Killilea arrived with PO Ferreira, § 87(2)(b) started to violently shake his arms and scream, trying to free himself from PO Espinosa. PO Diaz and PO Espinosa walked him to the van and at one point § 87(2)(b) broke free from them and threw his body against the van. Sgt. Killilea got out and assisted them with getting him into the van. They brought him to the passenger side door of the van. § 87(2)(b) stepped onto the railing and then pushed back to resist going inside the van. PO Ferreira got out of the van and also started assisting. They lifted him into the van. They issued him commands to go into the van repeatedly. It took § 87(2)(b) three to four minutes for

§ 87(2)(b) to get into the van. § 87(2)(b) got into the van and laid on the seat and continuously kicked at the officers at the door. § 87(2)(b) kicked PO Espinosa in the chest. Sgt. Killilea got into the van and tried to stop § 87(2)(b) from kicking by holding down his feet. § 87(2)(b) then started spitting at the officers. He spit on PO Espinosa's face and lips. Sgt. Killilea pushed § 87(2)(b)'s face down and away from the officers so that he could not spit at them. No officers punched or kicked § 87(2)(b) but only tried to restrain him and put him completely inside the van. No officer called him "homo" or "faggot." PO Ferreira and PO Espinosa sat § 87(2)(b) up straight. PO Espinosa saw that § 87(2)(b)'s nose was bleeding at this point but he did not know how § 87(2)(b) sustained this injury. § 87(2)(b) continued to spit, what was at this point blood, once they sat him up. § 87(2)(b) spit on the back of Sgt. Killilea's head while they were driving to the stationhouse.

At the stationhouse, § 87(2)(b) continued spitting at the desk. They took him to a cell and refused to have his handcuffs removed. He spat at everyone that approached him. PO Espinosa called for an ambulance and ESU because § 87(2)(b) would not stop spitting. ESU strapped him to a stretcher and transported him to the hospital. § 87(2)(b) later returned and PO Espinosa fingerprinted him. PO Espinosa had difficulty fingerprinting him because § 87(2)(b) was covered in blood and refused to be cleaned. § 87(2)(b) called him names. PO Espinosa did not recall § 87(2)(b) refusing to sign any documents. He did not recall any time when numerous officers interacted with § 87(2)(b). He did not recall any officer pushing § 87(2)(b) back in a chair. § 87(2)(b) only complained that the injuries to his face he sustained at the scene.

PO Espinosa later went to the hospital and to his personal doctor because § 87(2)(b) spit into his mouth.

**Subject Officer: SGT. SHANE KILLILEA**

- Sgt. Killilea is a § 87(2)(b)-old white male, 6'4", 250 lbs., with gray hair and blue eyes.
- On October 18, 2009, Sgt. Killilea was the umbrella supervisor for PSA5. He worked from 5:45 p.m. to 2:43 a.m. with PO Ferreira. He was in uniform and in a marked van, #9404.

**Memo Book**

At 9:39 p.m. PO Espinosa arrested § 87(2)(b) at § 87(2)(b) for § 87(2)(b). At 9:44 p.m. they requested EMS at the stationhouse for § 87(2)(b). At 9:50 p.m. EMS arrived at the stationhouse. At 9:58 p.m. they requested ESU to the stationhouse for an EDP prisoner. At 10:21 p.m. § 87(2)(b) was transported to § 87(2)(b).

**CCRB Testimony**

Sgt. Killilea was interviewed at the CCRB on May 6, 2010 (encl. 6A-F). § 87(2)(g) Sgt. Killilea pushed § 87(2)(b)'s face down and pointed it away from the officers he did so in order to stop § 87(2)(b) from spitting at them. § 87(2)(b) was still moving his body around, although Sgt. Killilea was unsure if § 87(2)(b) was trying to move his head. No officers punched or hit him while in the van. No officers called him "homo" or "faggot." § 87(2)(b) was screaming for the entire time that he was in the van and he at no point lost consciousness.

Sgt. Killilea did not interact with § 87(2)(b) after he was transported to the hospital by ESU and was not present when he was fingerprinted.

**Subject Officer: PO JOAN FERREIRA**

- *PO Ferreira is a § 87(2)(b)-old Hispanic male, 5'11", 235 lbs., with black hair and brown eyes.*
- *On October 18, 2009, PO Ferreira worked from 6:00 p.m. to 2:35 a.m. and was assigned as Sgt. Killilea's operator. He was in a marked van.*

**Memo Book**

PO Ferreira had no memo book entries regarding this incident.

**CCRB Testimony**

PO Joan Ferreira was interviewed at the CCRB on May 7, 2010 (encl. 7A-D). PO Ferreira corroborated PO Espinosa.

**Witness Officer: PO ERIKA DIAZ**

- *PO Diaz is a § 87(2)(b)-old Hispanic female, 5'2", 140 lb., with brown hair and brown eyes.*
- *On October 18<sup>th</sup>, 2009 PO Diaz was assigned to a foot post and was not assigned to a motor vehicle. She was working with PO Espinosa and was in uniform.*

**Memo Book**

At 9:30 p.m., PO Diaz stopped one male, § 87(2)(b) DOB § 87(2)(b), stopped for open container side of § 87(2)(b). At 9:39 p.m. PO Espinosa arrested § 87(2)(b) for § 87(2)(b).

**CCRB Testimony**

PO Erika Diaz was interviewed by the CCRB on May 7<sup>th</sup>, 2010 (encl. 8A-F). § 87(2)(g) She did not return to the stationhouse with § 87(2)(b). She continued patrol on foot.

**Witness Officer: PO ROGER SORTO**

- *PO Sorto is a § 87(2)(b)-old Hispanic male, 5'11", 185 lbs., with black hair and black eyes.*
- *On October 18, 2009, PO Sorto was assigned to a foot post at Taft Houses with PO Clark. He worked from 5:30 p.m. to 2:00 a.m.. He was in uniform and not assigned to a motor vehicle.*

**Memo Book**

PO Sorto had no memo book entries regarding this incident.

**CCRB Testimony**

PO Roger Sorto was interviewed at the CCRB on June 2, 2010 (encl. 9A-E). PO Sorto had no recollection of this incident.

**Medical Records**

The ACR indicates that § 87(2)(b) complained of nasal bleeding. He was spitting at and refused to be touched by the police. There were no other injuries to § 87(2)(b). He stated to them, "I had a lot of beer earlier."

§ 87(2)(b) was admitted to § 87(2)(b) on October 18, 2009. Records provided by the hospital indicate that § 87(2)(b) was behaving aggressively and was uncooperative at the hospital. He had nasal bleeding and a laceration on the top of his nose. He denied losing consciousness at any point (encl. 10A-H).

## **NYPD Documents**

### **PSA 5 Tour 3 Roll Call**

There were nine Hispanic male police officers, one Hispanic male sergeant, and one Hispanic male lieutenant (encl. 13A-F).

### **SPRINT #N13612**

At 10:02 p.m. on October 18, 2009, officers requested ESU to the PSA5 stationhouse for “a violent EDP” (encl. 11A-B).

### **Arrest Photo**

There is dried blood on the top of § 87(2)(b)'s nose (encl. 18B).

### **Arrest Report #§ 87(2)(b)**

§ 87(2)(b) was arrested for § 87(2)(b). He has no address listed. His arresting officer is PO Bethzaid Carrero, from Transit Bureau Homeless Outreach. PO Carrero is a female (encl. 18E).

### **Prisoner Holding Pen Roster**

§ 87(2)(b) is the only prisoner that was with § 87(2)(b) that appears to be homeless § 87(2)(g)

### **Arrest for Incident and Disposition**

- Case number § 87(2)(b) remains open. The next scheduled court date is § 87(2)(b) in Criminal Court. (encl. 20A-S)

### **Status of Civil Proceedings**

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming that he was “brutally attacked, falsely arrested, maliciously prosecuted and falsely imprisoned by Police officer Joel Espinosa, shield 13711 and his partner for allegedly possessing alcohol in public despite the fact that the claimant never engaged in such behavior”(encl.19A-B). He is seeking monetary damages.

### **Civilian Criminal History**

- § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)

### **Civilian CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3A).

### **Subject Officers CCRB History**

- PO Joel Espinosa has been a member of the service for one year and there are no substantiated CCRB allegations against him (encl. 2A).

- Sgt. Shane Killilea has been a member of the service for nine years and there are two substantiated CCRB allegations against him. Both allegations were from CCRB #200301499, closed by panel 1D-2004. Both substantiated allegations were retaliatory summonses and Sgt. Killilea pled guilty and lost seven vacation days. (encl. 2B).
- PO Ferreira has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. 2C).

## Conclusion

### Identification of Subject Officers

Sgt. Killilea, PO Espinosa, and PO Ferreira acknowledged interacting with § 87(2)(b)

§ 87(2)(b) did not know who allegedly called him a “faggot” and a “homo.” § 87(2)(b) could not tell the difference between any of the officers. § 87(2)(b) did not hear any such comments and the officers all denied making any such comments or hearing any other officer making such comments. § 87(2)(g)

In a photo array, § 87(2)(b) picked out a filler officer as the officer that pushed him over in a chair at the stationhouse. § 87(2)(b) chose PO Sorto as a witness officer. PO Sorto had no recollection of § 87(2)(b) and did not recall the incident. § 87(2)(b) also stated that he believed that the subject officer was the arresting officer of the homeless individual he was in the cell with. As stated above, that officer was a female. None of the officers interviewed knew of any other officers that interacted with him at the stationhouse. None of them recalled § 87(2)(b) refusing to sign a document. § 87(2)(g)

### Investigative Findings and Recommendations

**Allegation A – Force: PO Joel Espinosa used physical force against § 87(2)(b)**

**Allegation B – Force: Sgt. Shane Killilea used physical force against § 87(2)(b)**

**Allegation C – Force: PO Joan Ferreira used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Espinosa, Sgt. Killilea, and PO Ferreira punched and kicked him until he became unconscious. He sustained nasal bleeding and a laceration to his upper nose. He also stated that he sustained an injury to his leg from the officers. § 87(2)(b) had no contusions to his face. To medical personnel at § 87(2)(b) he denied losing consciousness and did not complain of any injury to his leg. Sgt. Killilea, PO Espinosa, and PO Ferreira all deny that § 87(2)(b) lost consciousness. Also, § 87(2)(b) did not sustain any injuries anywhere else on his body, despite claiming to have been punched and kicked all over his body repeatedly. § 87(2)(b) did not see officers use any force on § 87(2)(b) while § 87(2)(b) was in the van. Sgt. Killilea admitted to having held § 87(2)(b)'s legs and face down in the van in order to stop him from spitting at the officers while they were trying to get him all the way in the van. PO Ferreira and PO Espinosa assisted also in restraining § 87(2)(b) while he was kicking. § 87(2)(g)

Officer statements about § 87(2)(b) resisting are consistent with the arrest report and charges. Medical records indicate that he was behaving aggressively and uncooperatively. § 87(2)(g)

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]

When a civilian is physically resisting, an officer is permitted to use “wrestling holds and grips designed to physically overpower subjects.” Police Student’s Guide, Scale of Escalating Force, 2006. § 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]

**Allegation D – Offensive Language: An officer made remarks to § 87(2)(b) based upon the sexual orientation of § 87(2)(b)**

**Allegation E – Force: An officer used physical force against § 87(2)(b)**

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]

Team: \_\_\_\_\_

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Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

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